

Unclaimed funds

In order to avoid holding funds in a trust account indefinitely and losing contact with the owner(s), a lawyer should promptly follow up on any trust account check that has not cleared within two to three months of disbursement.

If the owner of funds held in trust cannot be located, the funds may have to escheat to the State of Wisconsin, pursuant to Wis. Stats. §177.03.

Prior to remitting funds to the Office of State Treasurer (OST), a lawyer should send a “due diligence” letter to the owner of any unclaimed funds in excess of \$50.¹ [See, Wis. Stats. §177.17(5)]. While the statute does not require “due diligence” letters for amounts of less than \$50, lawyers are encouraged to send such letters in all cases in order to document the lawyer’s efforts to locate the property owner and notify the owner of the impending transfer of trust funds to the OST.

Abandoned property, which OLR and the State Treasurer’s Office interpret to include unclaimed funds held in lawyer trust accounts, is identified by Wis. Stats. §177.02(1) as follows:

Except as otherwise provided in this chapter, all intangible property, including any income or increment derived from it, less any lawful charges, that is held, issued or owing in the ordinary course of a holder's business and that has remained unclaimed by the owner for more than 5 years² after it became payable or distributable is presumed abandoned. (Emphasis added).

Prohibited Deductions: OLR takes the position that a lawyer may not deduct charges for efforts to locate the owner(s) of funds held in trust. Such efforts are part of a lawyer’s fiduciary obligations.

The OST has an established policy that the only charges that may be deducted from unclaimed funds are the bank service charges and traveler’s check/money order fees authorized under Wis. Stats. §177.06(3) and §177.04(3). The OST has also acknowledged that other statutory liens (Warehouseman’s, Self-Storage and Mechanic’s Liens) allow for expenses to be deducted prior to reporting to the Unclaimed Property Unit.

For further information, contact the Unclaimed Property Program Administrator at the Office of State Treasurer, or, go to its website: www.ost.state.wi.us/home.

¹ A sample due diligence letter can be found in the Unclaimed Property Holder Reporting Guide that is available on the State Treasurer’s website: www.ost.state.wi.us/home, or in hard copy by contacting the Unclaimed Property Office, toll free, at: 877-699-9211.

² The 5-year period may be shortened to 1 year if the attorney is joining another firm, retiring, or otherwise ceasing the practice of law. (See, Wis. Stats. §177.11)